IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SIXTEENTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

And
THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 20627 of 2004

Between:

M/s. Sree Vadivambigai Textile Mills Ltd., Sales Dept at Salipet, Tenali 522 201, rep. by its Managing Director R. Subramanian, Aged 49 Years, R/o. Tamiladu.

..... PETITIONER

AND

1 Asst. Commissioner (CT) Intelligence, Guntur Division, Guntur.
2 The Commercial Tax Officer, Morrispet, Tenali, Guntur District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to Issue an appropriate writ, order or direction more particularly one in the nature of writ of mandamus declaring the action of the Ist respondent in detaining the goods through the impugned order No.GNT/05/2/1919 DT. 29.10.2004 and also sealing the almirah and table drawer beyond 24 hrs. contrary to Section 28 (5-A) even before the petitioner filing objections and passing of any orders pursuant to show cause notice dt. 28.10.2004, as illegal, arbitrary and without authority of law and contrary to

the principles of natural justice, set aside the same.

Counsel for the Petitioner: MR.BHASKAR REDDY VEMIREDDY

Counsel for the Respondent Nos.1 & 2: GP FOR COMMERCIAL TAXES

The Court, at the stage of admission, made the following:

Oral order: (Per: The Hon'ble Mr. Justice Bilal Nazki)

The controversy in this case is whether the goods could have been detained by the Authorities or not. During the hearing, it appeared that the goods worth more than Rs. 4,00,000-00 (Rupees four lakhs only) have been detained by the respondents on the pretext that during inspection it was found that some stocks were not shown in the account books and the actual turn over was suppressed.

Learned counsel for the petitioner submits that the Commercial Tax Officer had no power to pass impugned order detaining the goods, at best he could pass a fresh assessment order. Already a show cause notice for fresh assessment had been issued. The disputed amount is in the range of rupees one crore. Therefore, the petitioner submits that at best it could be made liable to pay tax of Rs. 4,00,000-00 (Rupees four lakhs only) because the rate of tax is 4% of the goods in question. 321 bales of polyster yarn have been detained, If the stock is continued to be detained it will ruin petitioner's business.

In these circumstances, without going into the question whether the Commercial Tax Officer could detain the goods, pending assessment, or not, it would be appropriate to dispose of the writ petition with a direction that on the petitioner furnishing a bank guarantee in the amount of Rs. 4,00,000-00 (Rupees four lakhs only) to the department, the goods shall be released. In the meantime the respondents shall be at liberty to pass fresh assessment orders in accordance with law.

Learned counsel for the petitioner submits that the petitioner needs some time and part of the goods may be released till he furnishes the bank guarantee. Therefore, we direct that 175 (One hundred and seventy five) bales of polyster yarn be released immediately to the petitioner and the balance of the stock be released on furnishing bank guarantee. The furnishing of bank guarantee shall remain operative subject to the assessment to be made by the Commercial Tax Officer.

The writ petition is accordingly disposed of. No costs.

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BILAL NAZKI, J

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S. ANANDA REDDY, J

Dt. 16-11-2004

Pvks/*

Nb: Operative portion by wire at party's cost.

B/o pvks/*

To

1. The Asst. Commissioner (CT) Intelligence, Guntur Division, Guntur.
2. The Commercial Tax Officer, Morrispet, Tenali, Guntur District.

3.2CCs to the Government Pleader for Commercial Taxes, A.P. High Court Buildings, Hyderabad. (OUT).

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